STUDIES IN HISTORY AND JURISPRUDENCE. By James Bryce. New York and London: Oxford University Press, American Branch. 1901. pp. xxiii, 926. 8vo.

In this work the author has collected sixteen essays connected largely by a comparison of the institutions and development of Rome and of England. The striking similarities between the Roman and British Empires, and the effects of colonial experiences upon their internal development, are portrayed most interestingly and instructively. A detailed examination of the development of Roman and English law and of the place therein occupied by magistrates, by jurists, and by legislation, results in the conclusion that the best law, that marked by reasonableness, simplicity, certainty, and self-consistency, is produced slowly and tentatively under the guidance of a trained body constantly modifying and summarizing the results of natural development — a system difficult to obtain in large democratic nations. The chief features likely to affect the future development of law are thought to be the dangers accompanying the modern enormous industrial development and the growth of democracy. Mr. Bryce believes that Roman and English law must eventually replace all other systems except possibly those founded on ancient religions; that while it is not probable that either will absorb the other, a greater tendency towards the unification of the two systems may not be improbable.

In the five essays relating to jurisprudence — Obedience, Sovereignty, The Law of Nature, Methods of Legal Science, and The Relation of Law and Religion — Mr. Bryce takes a position, as opposed to the Austinian school, that law is not based upon the command of the state. Indolence, deference, and sympathy are deemed to be more potent factors conducive to obedience than either reason or fear; and while the alleged evil effects of present tendencies upon obedience are fully recognized, the author is of the opinion that at least in politics and in industry the tendency of the average man to defer to those of stronger wills must still continue. Sovereigns are divided into legal — the ultimate person or body to whose directions the law attributes legal force, assuming obedience thereto — and practical — the person or body constituting in fact the strongest force in a state; and from these definitions it is argued that sovereignty may be limited, divided, or partially in abeyance. In addition to this analytical treatment, historical conceptions of sovereignty are treated in detail.

The classification of constitutions into Flexible and Rigid is substituted for the orthodox division into Written and Unwritten. The Flexible Constitution is one that can be changed by the same authority, acting in the usual manner, which makes or changes other laws, as in England; but where amendments can be made only by a different body, as in the United States, or by the same body acting in a different manner, as in France, the constitution is designated Rigid. The dangers and advantages of the two systems are portrayed, existing constitutions are examined in the light of these principles, and the action of centrifugal and centripetal forces on political communities and institutions is discussed. Completing the chapters upon constitutional topics are several essays considering in detail the institutions of primitive Ireland and of the two South African Republics, the new constitution of Australia, and the development of our own constitutional system especially with reference to the fears and predictions of Hamilton and De Tocqueville as compared with what history shows to be the real strength and weakness of our Constitution. The body of the work closes with an essay upon marriage and divorce, in which the author examines the causes which, both in the Roman Empire and at present throughout the world, result in the increased freedom of marriage, in the growing equality of husband and wife, and especially in the tendency to make divorce more easy.

For historians, jurists, lawyers, and perhaps more especially for laymen, Mr. Bryce has again produced a work both interesting and valuable. In several instances, however, the author's conclusions may not meet with complete acceptance. Undoubtedly his treatment of jurisprudential topics does a great deal towards removing the dogmatism and misconception of historical fact with which the science has been encumbered. Yet a fuller recognition of the

conception — admittedly fundamental in Rome and in England as well as in this country — that sovereign power is derived from the people, might well result in recognizing in the people, at least in such countries as the United States and Switzerland, the legal sovereignty which the author now distributes among the various agents of the people. Again, in the new classification of constitutions, France is placed in the same class with this country; but some things which are indicated as being the striking features of Rigid Constitutions generally, seem to apply to France no more than to England. It is also to be regretted that one preëminently fitted to express an opinion is perhaps overcautious in stating what seems to him to be the probable development of the questions considered. It may be added that the awkward and unattractive form in which the American edition is presented is most unfortunate.

TWO CENTURIES' GROWTH OF AMERICAN LAW. By the members of the faculty of the Yale Law School. New York: Chas. Scribner's Sons. 1901. pp. xviii, 538. 8vo.

This volume was published in connection with the bicentennial celebration of Yale University, as the contribution of the law faculty to the commemoration of that anniversary. Each of the eighteen chapters, except the Introduction, deals with a single main division of the law, discussing its development in this country during the last two centuries. Perhaps the most interesting and valuable portions of the book are found in a few chapters which enter more or less briefly into colonial history. The beginnings of a legal system are always interesting to the student of institutions, and the events, movements and tendencies of the colonial period would naturally have a considerable bearing on the subsequent development of a national system of law. There is also to be found in more than one chapter an occasional shrewd suggestion or instructive comparison, or a thoughtful generalization from scattered but related cases.

But unfortunately the greater part of the book is taken up with a mere enumeration of rules of law at present in force in this country, which have had their origin within the last two centuries. In most cases the statement is too general to be useful to the lawyer, and too brief or technical to be of value to the layman. There is seldom any attempt to explain the origin or the importance of the various rules, and they are not arranged or classified so as to indicate or illustrate general tendencies or suggest probable future development. There is a certain slight interest in running the eye over such a bare enumeration, and noting how many of the existing rules of law are of comparatively recent origin; but it is hardly to be supposed that the book was written to gratify curiosity. The chief virtue of such a catalogue would be its completeness; but here again we meet with disappointment. Such subjects as Negotiable Instruments and Conflict of Laws which, from their comparatively modern origin as branches of English and American law, especially deserve treatment in an account of the growth of our legal system, are disposed of with a brief and subordinate treatment, or a passing allusion. Similar faults are found in the individual chapters. Necessarily many unimportant matters must be omitted, but it is somewhat surprising to find no mention whatever of such a principle as the Rule against Perpetuities.

It must of course be admitted that it was no easy task to select the materials for a single volume out of the vast store included within the scope of the title; but the authorship of the book and the occasion of its publication were such as to justify high expectations. Nevertheless it is easier to criticise than to create, and the critic may therefore be pardoned if in self-defence he suggest some of the things which the reader, on first opening the book, might not unreasonably have expected to find therein. Three at least readily propose themselves. If in the enumeration of existing rules of law, all those which are peculiar to this country had been pointed out, the data at least would have been furnished from which to form a conception of the distinguishing characteristics of American law. This opportunity is neglected, for though the references to English law